

WASHINGTON HARBOUR, SUITE 400

3050 K STREET, NW

WASHINGTON, D.C. 20007-5108

(202) 342-8400

NEW YORK, NY  
TYSONS CORNER, VA  
CHICAGO, IL  
STAMFORD, CT  
PARSIPPANY, NJ  
BRUSSELS, BELGIUM

AFFILIATE OFFICES  
MUMBAI, INDIA

DIRECT LINE: (202) 342-8625

EMAIL: bfreedson@kelleydrye.com

October 11, 2006

## VIA HAND DELIVERY

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

RECEIVED

OCT 11 2006

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: WC Docket No. 06-172: In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas

Dear Ms. Dortch:

Broadview Networks, Inc., Covad Communications Group, NuVox Communications, Inc. and XO Communications, Inc. (the "CLEC Parties"), through counsel, hereby submit for filing the above-captioned proceeding their Motion to Compel Disclosure of Confidential Documents Pursuant to Protective Order, and four (4) copies of the same. In accordance with 47 C.F.R. § 1.727, enclosed please also find a copy of the CLEC Parties' proposed order, on computer disk.

Please feel free to contact the undersigned counsel at (202) 342-8625 if you have any questions regarding this filing.

Respectfully submitted,



Brett Heather Freedson

cc: Jeremy Miller, Wireline Competition Bureau  
Tim Stelzig, Wireline Competition Bureau  
Marcus Maher, Wireline Competition Bureau

W. C. Docket No. 06-172  
LISTABODE 0 x 4

CERTIFICATE OF SERVICE

I, Brett Heather Freedson, hereby certify that true and correct copies of the foregoing Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order, in WC Docket No. 06-172, were delivered by hand, and via email, this 11th day of October 2006, to the individuals on the following list:

Edward H. Shakin  
Sherry A. Ingram  
Verizon  
1515 North Courthouse Road  
Suite 500  
Arlington, Virginia 22201  
(703) 351-3065 (telephone)  
edward.h.shakin@verizon.com  
sherry.a.ingram@verizon.com

Evan T. Leo  
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.  
1615 M Street, N.W.  
Washington, D.C. 2036  
(202) 326-7930 (telephone)  
eleo@khhte.com

*Attorneys for Verizon*

  
Brett Heather Freedson

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petitions of the Verizon Telephone Companies	)	WC Docket No. 06-172
for Forbearance Pursuant to 47 U.S.C. § 160(c)	)	
in the Boston, New York, Philadelphia,	)	
Pittsburgh, Providence and Virginia Beach	)	
Metropolitan Statistical Areas	)	

**MOTION TO COMPEL DISCLOSURE OF CONFIDENTIAL INFORMATION  
PURSUANT TO PROTECTIVE ORDER**

Broadview Networks, Inc., Covad Communications Group, NuVox Communications, Inc., and XO Communications, Inc. (the “CLEC Parties”), through counsel and pursuant to 47 C.F.R. § 1.727, hereby respectfully request that the Commission compel the Verizon Telephone Companies (“Verizon”) to disclose, pursuant to the Protective Order,<sup>1</sup> all “stamped confidential documents” filed by Verizon in the above-captioned proceeding<sup>2</sup> in support of the Verizon Petitions seeking forbearance relief from certain of the Commission’s rules, under the Communications Act of 1934, as amended (the “Act”), within six Metropolitan Statistical Areas (“MSAs”).<sup>3</sup> The Protective

---

<sup>1</sup> *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Protective Order, DA 06-1870 (rel. Sept. 14, 2006) (“Protective Order”).

<sup>2</sup> As defined by the Protective Order, a “stamped confidential document” is any document “which bears the legend (or which shall otherwise have had the legend recorded upon it in a way that brings its attention to a reasonable examiner) “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” to signify that its contains material believed to be subject to protection under the Commission’s rules.” Protective Order ¶ 2.

<sup>3</sup> See Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the

Order issued by the Bureau, *sua sponte*, affirmatively requires that Verizon permit interested parties to access and review *all* confidential information designated by Verizon, and redacted from the Verizon Petitions and accompanying documents, subject to the terms and conditions of the Protective Order, and does not authorize Verizon to unilaterally limit the scope of its disclosure.<sup>4</sup> Moreover, the refusal by Verizon to make available, pursuant to the terms and conditions of the Protective Order, all confidential information would effectively deny the CLEC Parties, and their counsel, any meaningful opportunity to comment on the data that will inform the Commission's decision of whether to grant the forbearance relief requested by Verizon. Therefore, for the reasons set forth herein, the Bureau should compel Verizon to make available complete and unredacted copies of its Petitions and all supporting materials, upon request by any signatory of the Protective Order Acknowledgement.

### **DISCUSSION**

On September 6, 2006, Verizon filed with the Commission six separate Petitions requesting that the Commission substantially deregulate, pursuant to Section 10 of the Act,<sup>5</sup> certain of the Verizon Telephone Companies' provision of telecommunications services within six MSAs; Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach.<sup>6</sup> In

---

Pittsburgh Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area (filed Sept. 6, 2006) (together, the "Verizon Petitions").

<sup>4</sup> CLEC Parties question whether Verizon is permitted under the Protective Order to use the confidential information in that manner that it did in the Verizon Petitions.

<sup>5</sup> 47 U.S.C. § 160.

<sup>6</sup> The Verizon Petitions request that the Commission forbear from applying to Verizon, within those markets: (1) loop and transport unbundling obligations, under 47 U.S.C. § 251(c) (51 C.F.R. §§ 51.319(a), (b) and (e)); (2) Part 61 dominant carrier tariff requirements (51 C.F.R. §§ 61.32, 61.33, 61.58 and 61.59); (3) Part 61 price cap

support of Verizon's weighty claims, the Verizon Petitions purportedly include market-specific data showing the level of competitive activity that exists within the MSAs that are subject to Verizon's request for forbearance relief. The supporting documentation proffered by Verizon, however, largely is redacted from the Verizon Petitions, and thus, remains shielded from public inspection and comment.

To "facilitate and expedite review of the confidential information submitted by parties to this proceeding," including such information set forth in the Verizon Petitions and attachments, the Bureau issued, *sua sponte*, a Protective Order detailing the procedures whereby interested parties and their counsel may obtain "stamped-confidential documents."<sup>7</sup> The Protective Order, on its face, applies to all privileged or confidential information submitted in this proceeding, and does not exempt from disclosure any information included in the Verizon Petitions and accompanying materials on which the Commission ultimately may rely in rendering forbearance determinations in this proceeding. Verizon has not requested further confidential treatment of any information included in the Verizon Petitions and accompanying materials, in accordance with the procedures set forth in the Commission's rules.<sup>8</sup>

---

regulations (51 C.F.R. §§ 61.41-61.49); (4) Computer III requirements, including CEI and ONA requirements; and (4) dominant carrier requirements, arising under Section 214 of the Act and Part 63 of the Commission's rules, addressing the processes for acquiring lines, discontinuing services, assigning or transferring control and acquiring affiliation (51 C.F.R. §§ 63.03, 63.04 and 63.60-63.66) *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Public Notice; Pleading Cycle Established for Comments on Verizon's Petitions for Forbearance in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas, DA 06-1869 (rel. Sept. 14, 2006) ("Public Notice"). at 1.

<sup>7</sup> Protective Order ¶ 1.

<sup>8</sup> See 47 C.F.R. § 0.459. Section 0.459 of the Commission's rules permits any party submitting information to the Commission to request that such information be withheld from public inspection, provided that the information subject to the request is clearly

The CLEC Parties and their attorneys lawfully requested that Verizon make available complete copies of the Verizon Petitions and accompanying materials, including all information designated by Verizon as “confidential,” and redacted from the documents filed by Verizon for public inspection. As required by the Protective Order, the attorneys representing the CLEC Parties in this proceeding each filed with the Commission, and served on Verizon, an executed Protective Order Acknowledgement, and thereby agreed to “comply with and be bound by the terms and conditions of th[e] Protective Order” for obtaining and handling Verizon’s “stamped-confidential” documents.”<sup>9</sup> Without regard to the clear mandates of the Protective Order, Verizon withheld from disclosure the documents claimed by Verizon to include “customer proprietary information,” other than such information relating directly to the particular CLEC Parties. Responding to repeated requests by counsel to the CLEC Parties, and other interested parties, Verizon claimed only that its internal policies preclude disclosure of the claimed “CLEC and customer proprietary information” under all circumstances, including in

---

identified, and that the request is properly supported by “a statement of the reasons for withholding the materials from inspection,” including the detailed explanations mandated by Section 0.459(b). Importantly, Section 0.459(c) further states that “casual requests which do not comply with the requirements of Section 0.459(a) and (b) of this Section will not be considered.”

<sup>9</sup> See Letter from Brett Heather Freedson, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (transmitting the executed Protective Order Acknowledgements of Brad E. Mutschelknaus, Genevieve Morelli, Thomas Cohen and Brett Heather Freedson, of Kelley Drye & Warren LLP) (Sept. 27, 2006); Letter from Brett Heather Freedson, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (transmitting the executed Protective Order Acknowledgements of Karen M. Potkul and Lisa R. Youngers, of XO Communications) (Sept. 29, 2006); Letter from Brett Heather Freedson, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (transmitting the executed Protective Order Acknowledgement of Edward A. Yorkgitis, Jr.) (Oct. 3, 2006).

Commission proceedings.<sup>10</sup> Verizon has failed to cite any provision of the Protective Order, however, as a basis for its position.<sup>11</sup>

The refusal of Verizon to make available to the CLEC Parties, and their attorneys, complete copies of the Verizon Petitions and accompanying materials, including all “confidential” information designated by Verizon, violates the Protective Order. On its face, the Protective Order does not limit Verizon’s disclosure obligations, or otherwise exempt from disclosure any “CLEC and customer proprietary” or other information set forth in the Verizon Petitions and accompanying materials. Verizon’s policy of disclosing only client-specific information to signatories of the Protective Order Acknowledgement effectively precludes the CLEC Parties, and their counsel, from obtaining information subject to the Protective Order in a timely and efficient manner.<sup>12</sup> Thus, the Bureau’s grant of this Motion is necessary to ensure that Verizon fully complies with the Protective Order, in a manner that furthers the Bureau’s stated objectives of facilitating and expediting review of confidential information by interested parties to this proceeding.

Importantly, the refusal of Verizon to make available to the CLEC Parties, and their counsel, pursuant to the terms and conditions of the Protective Order, all of the designated “confidential” information set forth in the Verizon Petitions and accompanying materials, substantially threatens the integrity of this proceeding. Under Section 10 of the Act, Verizon

---

<sup>10</sup> Letter from Sherry A. Ingram, Assistant General Counsel – Federal Regulatory, Verizon to Patrick J. Donovan, Bingham McCutchen LLP, Re: Access to Confidential Information in FCC WC Docket No. 06-172 (Sept. 25, 2006).

<sup>11</sup> *Id.*

<sup>12</sup> For each additional party that counsel to the CLEC Parties intends to represent in this proceeding, Verizon has requested that each individual attorney execute and file with the Commission a separate Protective Order Acknowledgement, indicating representation of that party.

must demonstrate to the Commission both that robust competition exists within the MSAs subject to its forbearance relief request, and that forbearance relief within the MSAs addressed by the *Verizon Petitions* serves the public interest, convenience and necessity.<sup>13</sup> Absent the opportunity to review and analyze all of the information submitted to the Commission by Verizon, the CLEC Parties, and their counsel, cannot offer meaningful comments on whether Verizon has satisfied its burden of proof. At bottom, the public interest demands that Verizon comply fully with the terms and conditions of the Protective Order, which unequivocally require that Verizon disclose all confidential information set forth in the *Verizon Petitions* and accompanying materials.

The public interest demands that all parties impacted by the *Verizon Petitions* have a meaningful opportunity to comment on whether Verizon's forbearance requests in fact justify relief. Thus, the Commission must take affirmative steps to ensure that interested parties to this proceeding be permitted to access, review and comment on all confidential information submitted to the Commission by Verizon. The Commission must not rely on self-serving claims by Verizon that it has provided to commenters "information sufficient to evaluate the level of competition" within the MSAs for which forbearance relief is requested by the *Petitions*.<sup>14</sup> At bottom, without any opportunity to review and analyze *all* information before the Commission in this proceeding, the CLEC Parties cannot effectively participate in the "notice and comment" proceeding directed by the Act.

---

<sup>13</sup> See 47 U.S.C. § 160.

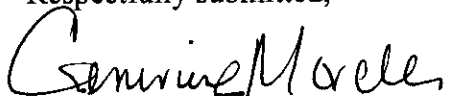
<sup>14</sup> See *supra* n. 9.



### CONCLUSION

For the reasons set forth herein, the Commission should grant this Motion, and compel Verizon to disclose, pursuant to the Protective Order, all "stamped confidential" documents filed by Verizon in the above-captioned proceeding in support of the Verizon Petitions.

Respectfully submitted,



---

Brad E. Mutschelknaus  
Genevieve Morelli  
Thomas Cohen  
KELLEY DRYE & WARREN LLP  
3050 K Street N.W., Suite 400  
Washington, D.C. 20007  
(202) 342-8625 (telephone)  
(202) 342-6541 (facsimile)

*Counsel to the CLEC Parties*

Dated: October 11, 2006

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petitions of the Verizon Telephone Companies	)	WC Docket No. 06-172
for Forbearance Pursuant to 47 U.S.C. § 160(c)	)	
in the Boston, New York, Philadelphia,	)	
Pittsburgh, Providence and Virginia Beach	)	
Metropolitan Statistical Areas	)	

**PROPOSED ORDER**

**Adopted:**

**Released:**

1. On October 11, 2006, Broadview Networks, Inc., Covad Communications Group, NuVox Communications, Inc. and XO Communications, Inc. (the "CLEC Parties"), through counsel, requested that the Commission, pursuant to 47 C.F.R. § 1.727, compel the Verizon Telephone Companies ("Verizon") to disclose, pursuant to the Protective Order, all "stamped confidential documents" submitted to the Commission by Verizon in the above-captioned proceeding, including all privileged and confidential information set forth in the Verizon Petitions and the attachments thereto.<sup>1</sup> For the reasons set forth in the CLEC Parties' Motion to Compel Disclosure of Confidential Information Pursuant to Protective Order, the relief requested by the CLEC Parties is hereby granted, and Verizon is ordered to make available to the CLEC Parties complete and unredacted copies of its Petitions in the above-captioned proceeding.

**FINDINGS OF FACT**

2. On September 6, 2006, Verizon filed with the Commission six separate Petitions requesting that the Commission, pursuant to Section 10 of the Act, forbear from applying to Verizon's provision of telecommunications services certain of the Commission's unbundling and dominant carrier rules, within six Metropolitan Statistical Areas ("MSAs"); Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach.<sup>2</sup> The Verizon

---

<sup>1</sup> Motion of Broadview Networks, Inc., Covad Communications Group, NuVox Communications, Inc., Talk America, Inc. and XO Communications, Inc. to Compel Disclosure of Confidential Information Pursuant to Protective Order, WC Docket No. 06-172 (filed Oct. 10, 2006) ("Motion").

<sup>2</sup> See Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the New York Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Philadelphia Metropolitan Statistical Area; Petition of the

Petitions and attachments include market-specific data asserted by Verizon to demonstrate the level of competitive activity that exists within the MSAs that are subject to Verizon's request for forbearance relief. The Verizon Petitions redact substantial data proffered by Verizon in support of its forbearance requests.

3. To "facilitate and expedite review of the confidential information submitted by parties to this proceeding," including such information set forth in the Verizon Petitions and attachments, the Bureau issued, *sua sponte*, a Protective Order detailing the procedures whereby interested parties and their counsel may obtain "stamped-confidential documents" submitted by any party to this proceeding.<sup>3</sup>

4. Verizon has not requested further treatment of any privileged and confidential information included in the Verizon Petitions and attachments pursuant to the procedures set forth in 47 C.F.R. § 0.459.<sup>4</sup>

5. The CLEC Parties and their attorneys have requested that Verizon make available for review complete copies of the Verizon Petitions and attachments, including all information designated by Verizon as "confidential," and redacted from the documents submitted by Verizon for public inspection.

6. The attorneys representing the CLEC Parties in this proceeding each filed with the Commission, and served on Verizon, an executed Protective Order Acknowledgement, and thereby agreed to "comply with and be bound by the terms and conditions of th[e] Protective Order" for obtaining and handling Verizon's "stamped-confidential" documents."<sup>5</sup>

---

Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Pittsburgh Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Providence Metropolitan Statistical Area; Petition of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Virginia Beach Metropolitan Statistical Area (filed Sept. 6, 2006) (together, the "Verizon Petitions").

<sup>3</sup> *In the Matter of Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Protective Order, DA 06-1870 (rel. Sept. 14, 2006) ("Protective Order") ¶ 1.

<sup>4</sup> See 47 C.F.R. § 0.459. Section 0.459 of the Commission's rules permits any party submitting information to the Commission to request that such information be withheld from public inspection, provided that the information subject to the request is clearly identified, and that the request is properly supported by "a statement of the reasons for withholding the materials from inspection," including the detailed explanations mandated by Section 0.459(b). Under Section 0.459(c), "casual requests" that do not comply with the requirements of Section 0.459(a) and (b) must not be considered.

<sup>5</sup> See Letter from Brett Heather Freedson, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (transmitting the executed Protective Order Acknowledgements of Brad E. Mutschelknaus, Genevieve Morelli,

7. Verizon has refused to disclose to the CLEC Parties, and their attorneys, any documents claimed by Verizon to include "customer proprietary information," other than such information relating directly to the particular CLEC Parties.<sup>6</sup>

### **CONCLUSIONS OF LAW**

8. The Protective Order requires that Verizon make available to all interested parties any privileged and confidential information submitted to the Commission by Verizon in this proceeding, including, without limitation, such information set forth in the Verizon Petitions and attachments.

9. The refusal of Verizon to disclose to the CLECs Parties and their attorneys, subject to the terms and conditions of the Protective Order, certain privileged and confidential information submitted by Verizon to the Commission violates the Protective Order.

10. Accordingly, IT IS ORDERED that, pursuant to the Protective Order, Verizon make available to the CLECs Parties, and their attorneys, complete and unredacted copies of the Verizon Petitions and attachments, including any privileged and confidential information submitted by Verizon to Commission in this proceeding.

### **FEDERAL COMMUNICATIONS COMMISSION**

---

Thomas Cohen and Brett Heather Freedson, of Kelley Drye & Warren LLP) (Sept. 27, 2006); Letter from Brett Heather Freedson, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (transmitting the executed Protective Order Acknowledgements of Karen M. Potkul and Lisa R. Youngers, of XO Communications) (Sept. 29, 2006); Letter from Brett Heather Freedson, Kelley Drye & Warren LLP to Marlene H. Dortch, Secretary, Federal Communications Commission (transmitting the executed Protective Order Acknowledgement of Edward A. Yorkgitis, Jr.) (Oct. 3, 2006).

<sup>6</sup> Letter from Sherry A. Ingram, Assistant General Counsel – Federal Regulatory, Verizon to Patrick J. Donovan, Bingham McCutchen LLP, Re: Access to Confidential Information in FCC WC Docket No. 06-172 (Sept. 25, 2006).

DOCKET NO. 06 772

Attachment A

DOCUMENT OFF-LINE

This page has been substituted for one of the following:

- o This document is confidential (**NOT FOR PUBLIC INSPECTION**)
- o An oversize page or document (such as a map) which was too large to be scanned into the ECFS system.
- o Microfilm, microform, certain photographs or videotape.
- o Other materials which, for one reason or another, could not be scanned into the ECFS system.

The actual document, page(s) or materials may be reviewed (**EXCLUDING CONFIDENTIAL DOCUMENTS**) by contacting an Information Technician at the FCC Reference Information Centers) at 445 12<sup>th</sup> Street, SW, Washington, DC, Room CY-A257. Please note the applicable docket or rulemaking number, document type and any other relevant information about the document in order to ensure speedy retrieval by the Information Technician

1 DISKETTE